

Swiss Taxation - Update

IFMA

November 16, 2011

Daniel Spitz
Partner
Certified Tax Expert

Mario Delgado
Partner
Certified Fiduciary Agent





INDEX



1. Introduction
2. Double tax treaties update
3. New Law on tax at source at international level
4. Federal tax practice update – WHT
5. Federal tax practice update – Stamp tax
6. Taxation of RSU and SOP
7. Lump-sum taxation
8. Questions



INDEX



1. Introduction

2. Double tax treaties update

3. New Law on tax at source at international level

4. Federal tax practice update – WHT

5. Federal tax practice update – Stamp tax

6. Taxation of RSU and SOP

7. Lump-sum taxation

8. Questions

1. Presentation

DS TAX CONSULTING SA

The partners

- Daniel Spitz – Specialist in Corporate tax advice
- Mario Delgado – Specialist in Individual tax advice

Background

- Ex-Big4
- Focus on taxes only (no « fiduciaire ») www.dsconsulting.ch
- Able to deal with international issues/constraints
- **Expertise**
- **Quality**
- **Tailor-made solutions**
- **Added value**
- **Fair prices**



1. Presentation

Daniel Spitz

Profile

- Law Degree, Certified Tax Expert
- 12 years' experience in taxation in Federal Tax administration and Big4 firms (Andersen, Ernst & Young, Deloitte)
- Responsible for the corporate tax department at Deloitte in Lausanne
- 2 years self-employed under the name of DS Tax Consulting (creation of own clients and network)
- Managing Partner at DS Tax Consulting SA

Tax Consulting (www.dsconsulting.ch)

- **Specialisations** : Tax holidays, special tax status, group taxation, international groups, ownership transfer, due diligence, VAT



1. Presentation

Mario Delgado

Profile

- Certified Fiduciary Agent
- 10 years' experience in taxation in Canton Vaud, tax and accounting firms (Deloitte and FDZ), industry (Honeywell)
- Managed key clients' accounts at Deloitte in Lausanne
- GMS Manager at Honeywell
- Partner at DS Tax Consulting SA

Tax Consulting (www.dsconsulting.ch)

- **Specialisations** : International mobility, lump sum taxation, tax planning, employees' incentive plan taxation, negotiation of tax rulings, succession, individual's tax returns.



INDEX

1. Introduction

2. Double tax treaties update

3. New Law on tax at source at international level

4. Federal tax practice update – WHT

5. Federal tax practice update – Stamp tax

6. Taxation of RSU and SOP

7. Lump-sum taxation

8. Questions

2. Double tax treaties

Entry in force, a long way...

Initials (confidential)



Consultation / Amendments / Negotiations



Signature (public)



Internal approval (both States)



Entry in force

2. Double tax treaties

Treaties recently (re)negotiated by Switzerland

In force

01.01.2010/2011

France (R/eoi)

Spain (R/eoi)

India (R/eoi)

01.01.2011

Austria (R/eoi)

Chili (N/-)

Denmark (R/eoi)

Finland (R/eoi)

Great Britain (R/eoi)

Luxembourg (R/eoi)

Mexico (R/eoi)

Norway (R/eoi)

Qatar (N/eoi)

01.01.2012

Colombia (N/eoi)

Georgia (N/-)

!Netherlands! (R/eoi)

Poland (R/eoi)

Tadjikistan (N/-)

Signed

Canada (R/eoi)

Germany (R/eoi)

Greece (R/eoi)

Hong-Kong (N/eoi)

Japan (R/eoi)

Kazakhstan (R/eoi)

Malta (N/eoi)

Romania (R/eoi)

Russia (R/eoi)

Singapore (R/eoi)

Slovakia (R/eoi)

South Korea (R/eoi)

Sweden (R/eoi)

Turkey (N/eoi)

Uruguay (N/eoi)

USA (R/eoi)

Initials

Ireland (R/eoi)

Oman (N/eoi)

Peru (N/eoi)

Portugal (R/eoi)

UAE (N/-)

In discussion

Brazil

Costa Rica

Lybia...

Senegal

Syria

Taiwan

N = New convention

R = Revised convention

- = No exchange of information based on art. 26 OECD Convention Model

eoi = Exchange of information based on OECD Convention Model

In red = DTT with automatic update to the best negotiated clause


In bold = DTT close to enter into force

DS TAX CONSULTING





INDEX

- 
1. Introduction
 2. Double tax treaties update
 - 3. New Law on tax at source at international level**
 4. Federal tax practice update – WHT
 5. Federal tax practice update – Stamp tax
 6. Taxation of RSU and SOP
 7. Lump-sum taxation
 8. Questions

3. Tax at source at international level (LISint)

Background

- Long time dispute between CH and Germany on non-declared bank accounts in Switzerland of German residents
- Switzerland always opposed bank secrecy
- Exchange of information
- Stolen bank data (CS) sold to German tax authority
- Threat of a new “UBS case”
 - Switzerland forced to negotiate
- Negotiations over with Germany and the United Kingdom (in consultation phase)
- 10 – 15 countries already strongly expressed their interest...

3. Tax at source at international level (LISint)

Basics of new law

- Create a legal frame for the major exceptions created by the new treaties with Germany and the UK and set the frame for the next treaties
- Same basics as for the EU-savings agreement
- **Not “self-applicable”. Needs a bilateral treaty with a foreign country to spread effects against the tax payers of this country.**
- Introduction of a “tax at source discharge” for any income (capital gains, interest, dividend) generated on assets belonging to a tax payer of the other country
- Introduction of a one-time lump-sum payment to solve the past
- In exchange: the tax payer and information related to his assets remain anonymous
- Self-denunciation instead of tax at source discharge always possible



3. Tax at source at international level (LISint)

Concretely (UK treaty)

- Tax at source discharge:
 - 48% on interest income
 - 40% on dividends
 - 27% on capital gains
 - 48% on other income
- One-time lump sum payment = (“average” assets) x (19% to 34%)
- If lump-sum taxation is not wished, the tax payer can disclose his assets to the UK tax authority.
- If no taxation at source and/or lump-sum taxation and/or disclosure of assets is wished, the tax payer has to close his accounts in Switzerland.
- Introduction of fishing expedition up to 500 requests per year
- Swiss banks will pre-pay CHF 500 million! (2 billion with Germany)
- In exchange? Nothing concrete...

INDEX

1. Introduction
2. Double tax treaties update
3. New Law on tax at source at international level
- 4. Federal tax practice update – WHT**
5. Federal tax practice update – Stamp tax
6. Taxation of RSU and SOP
7. Lump-sum taxation
8. Questions

4. Federal tax practice update – WHT


Dividend distribution within a group of companies

From CH to EU, treaty countries and US

- Declaration procedure available since 2005
- Has to be requested through forms 823
- Dividend has to be announced through forms 103/102/110 and 108 with a **30 day deadline**
- FTA strengthened its position over the last 12 months, requesting payment of WHT if announcement after the 30 day deadline
- **Recent Federal Court decision confirming position of FTA!**
- **Now any dividend distribution will trigger WHT if not announced properly after 30 days, even if authorisation procedure duly in place!!!**



INDEX

- 
1. Introduction
 2. Double tax treaties update
 3. New Law on tax at source at international level
 4. Federal tax practice update – WHT
 - 5. Federal tax practice update – Stamp tax**
 6. Taxation of RSU and SOP
 7. Lump-sum taxation
 8. Questions

5. Tax Federal tax practice update – Stamp tax

Entry in force on 1.1.2011

Additional paid-in capital (« Agio »)

- Refund no longer subject to income tax
- Refund no longer subject to withholding tax
- Conditions to fulfil:
 - Mentioned separately in the balance sheet (as “agio”)
 - « Opened » (vs. hidden) additional payment
 - From the shareholder(s)
 - Applicable to additional payments since January 1, 1997

5. Tax Federal tax practice update – Stamp tax

Agio - Extremely strict application rules!

Rules to strictly respect

- Announce any “old” agio within 30 days (max 7 months) after approval of accounts closed in 2011. Otherwise not recognised as agio (-> WHT!)
- File form 170 in due time for each increase of agio reserve. In case of increase only, usually within 30 days after approval of accounts (max 7 months).
- File form 170 for each repayment of agio within 30 days after decision of General Assembly but not later than 30 days after repayment.



INDEX

1. Introduction
2. Double tax treaties update
3. New Law on tax at source at international level
4. Federal tax practice update – WHT
5. Federal tax practice update – Stamp tax
- 6. Taxation of RSU and SOP**
7. Lump-sum taxation
8. Questions

6. Taxation of RSU and SOP

➤ Entry in force: January 2013

What are the real changes ?

- Exit tax abolishment
- Pro-rata taxation
- Tax at source withholdings for non-residents
- Employer's obligation to collect and pay taxes for non-residents

Already applicable by some cantonal authorities

6. Taxation of RSU

Then (AFC circular no 5/1997)

Shares

- Restriction?

- ❖ No: taxation at grant on full value
- ❖ Yes: taxation at grant on reduced value
(max reduction of 44% at 10 years)

Now (new legislation 2013)

Shares

- Restriction?

- ❖ No: taxation at grant on full value
- ❖ Yes: taxation at grant on reduced value
(6% per year, max 60% reduction)

6. Taxation of SOP

Then (AFC circular no 5/1997)

Stock options (with equity rights)

- Restriction?
 - ❖ No: taxation at grant on strike price
 - ❖ Yes, less than 5 years : taxation at grant on reduced value (max reduction of 25% for 5 years)

 - ❖ Yes, more than 5 years : taxation at exercise (unless real valuation possible at grant)

Now (new legislation 2013)

Stock options (with equity rights, negotiable)

- Restriction?
 - ❖ No: taxation at grant on full value
 - ❖ Yes: taxation at grant on reduced value (6% per year max 60% reduction)

6. Taxation of SOP

Then (AFC circular no 5/1997)

Stock options (no equity rights acquisition, cashless)

- Restriction?

- ❖ No: taxation at grant on strike price
- ❖ Yes: taxation at exercise on strike price

Now (new legislation 2013)


Stock options (with equity rights but not negotiable, no equity rights, cashless)

- Restriction?

- ❖ No: taxation at exercise on strike price
- ❖ Yes: taxation at exercise on strike price



INDEX

- 
1. Introduction
 2. Double tax treaties update
 3. New Law on tax at source at international level
 4. Federal tax practice update – WHT
 5. Federal tax practice update – Stamp tax
 6. Taxation of RSU and SOP
 - 7. Lump-sum taxation**
 8. Questions

7. Lump-sum taxation

Criteria

- Swiss taxation based on family expenditure
- 1st domiciliation or after an absence of 10 years minimum
- Swiss nationals (limited to 1st tax year) Foreigners (no tax year limitation)
- No professional activity in Switzerland possible

Tax calculation review, tax return

- Investment and property income sourced in Switzerland
- Copyright, royalties, etc
- Pensions from Swiss sources
- Foreign income benefiting from a double tax treaty relief


7. Lump-sum taxation

New legislation

- Minimum lump-sum:
 - CHF 400'000 (LIFD), cantons will set their own minimum (LHID)
 - 7x rent paid or property rental value (5x in the past)
 - 3x pension paid in hotel, etc (2x in the past)
- Swiss nationals no longer benefit
- The Federal law mentions the family expenditures in Switzerland and abroad
- Wealth tax to be included in tax calculation review
- Transition period of 5 years



INDEX

- 
1. Introduction
 2. Double tax treaties update
 3. New Law on tax at source at international level
 4. Federal tax practice update – WHT
 5. Federal tax practice update – Stamp tax
 6. Taxation of RSU and SOP
 7. Lump-sum taxation
 - 8. Questions**

Contact

Daniel Spitz

Certified tax expert, Lawyer
Managing Partner

DS Tax Consulting SA
Charmettes 7
1003 Lausanne

T. 021 311 00 53
M. 079 709 66 49
F. 021 311 00 58

dspitz@dsconsulting.ch



Contact

Mario Delgado


Certified Fiduciary Agent
Partner

DS Tax Consulting SA
Charmettes 7
1003 Lausanne

T. 021 311 00 21
M. 076 433 00 21
F. 021 311 00 58

mdelgado@dsconsulting.ch





DS TAX CONSULTING

EXPERTS IN TAXES. WE ADVISE YOU SAVE.